

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1259 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAZIR AHMED YUSUF PATEL & OTHERS

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR NK MAJMUDAR for Petitioners

MR ND GOHIL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/10/96

ORAL JUDGEMENT

1. The petitioners, in all eleven, residents of Village Manubar, Dist. Bharuch, filed this writ petition before this court and prayed therein that the action of the respondents in auctioning the houses which are in occupation of the petitioners situated in Village Manubar in Dist. Bharuch be quashed and set aside and further they may be restrained from taking forcible possession thereof from the petitioners.

2. The petitioners have come up with a case in this writ petition that the Village Manubar was affected during the earthquake in the year 1978. It appears that for the rehabilitation of the victims of the earthquake, the State Government has constructed the quarters in the rural area. The resolution has been passed by the Government in the Revenue Department that those quarters be allotted to the persons affected by the earthquake on hire purchase basis. The concerned Gram Panchayat has also passed the resolution to that effect. The present petitioners are the affected persons during the earthquake and they were allotted the quarters by an order dated 14th August, 1981 of the respondent no.2. These allotments have been made to the petitioners on hire purchase basis. In pursuance of the aforesaid order, the petitioners have spent about Rs.2500/- to Rs.3000/- on each houses for bringing them in proper condition. They have also taken the electric connection from the Electricity Board. Even in the property register maintained by the Panchayat their names have been entered and they are paying various taxes to the Panchayat. The necessary certificates of the deposit of the amount and the rent have been given. The petitioners are occupying the quarters, but they were shocked to receive the order of the Taluka Development Officer. The quarters were decided to be auctioned and the petitioners were directed to take back the amount which has been deposited by them. That action of the respondent has given cause to the petitioners to file this Special Civil Application before this Court.

3. The Government has taken the decision for auctioning the houses. This court has protected the petitioners by grant of interim relief on 4-3-1986 which continues till this date meaning thereby the petitioners are in possession of the quarters. The petitioners have made a reference to the resolution of the Gram Panchayat under which it has been resolved that in case the allotted houses are now to be disposed of by a public auction then in the village, disputes will take place and the atmosphere of the village will be affected. The Gram Panchayat has requested to the Collector, Dist. Bharuch that the houses which are allotted on hire purchase basis may not be allotted by public auction, but may be given permanently to the allottees thereof. In view of this resolution of the Gram Panchayat coupled with the two facts more that the petitioners are in occupation of those quarters for all these years under the order of this court as well as the petitioners would have spent heavy amount for making these houses to be habitable and

in maintenance, it is rather in the larger interest of the parties that the houses may be allowed to be continued with the petitioners. Whatever amount which has been decided to be taken from them for allotment on hire purchase basis as well as rent may be taken from the petitioner with some reasonable interest, if any amount remain unpaid. The course which has been suggested to be followed by the Government of allotting those houses by public auction will certainly result in inconveniences to the poor persons who have already been settled in the houses. I find sufficient justification in the apprehension of the Gram Panchayat that in case those houses are put to auction for allotment it will give rise to disputes in the village and the atmosphere of the village will be affected. Apart from this, this is a matter of experience also that the houses which are in occupation of the other persons are put to auction, the houses may not fetch good amount in the auction. Not only this, in the villages, there may be a possibility of disputes in case these houses are now put to auction. Nobody will come forward to participate in the auction. Last but not the least, the interest of the petitioners have also been created.

4. Taking into consideration the totality of the facts of this case, I am of the opinion that the interest of justice will be met in case this writ petition is disposed of with the directions to the respondent no.1 to reconsider this matter afresh in the light of the observations made by this court and the houses in question may be allowed to be continued in possession of the petitioners on hire purchase basis though subject to the condition that the petitioners have to pay the amount of the hire purchase as well as rent till date at the rate as it is settled, and they will further make the payment of interest on the unpaid amount at the rate of 12% from due date till the date of payment thereof. Still in case, the respondent considers that the auction is the only mode of the disposal of these quarters which are in possession of the petitioners for last many years then a reasoned order may be passed and a copy of the same may be sent to the petitioners by registered post. It is further made clear that before taking such a decision, the petitioners may also be afforded an opportunity of personal hearing. Rule stands disposed of accordingly with no order as to costs.

zgs/-